



Cornell University  
ILR School

Cornell University ILR School  
**DigitalCommons@ILR**

---

Consent Decrees

Labor and Employment Law Program

---

4-13-1998

## Equal Employment Opportunity Commission v. Lew Lieberbaum & Co., Inc.,

Judge John G. Koeltl

Follow this and additional works at: <https://digitalcommons.ilr.cornell.edu/condec>

Thank you for downloading this resource, provided by the ILR School's Labor and Employment Law Program. [Please help support our student research fellowship program with a gift to the Legal Repositories!](#)

---

This Article is brought to you for free and open access by the Labor and Employment Law Program at DigitalCommons@ILR. It has been accepted for inclusion in Consent Decrees by an authorized administrator of DigitalCommons@ILR. For more information, please contact [catherwood-dig@cornell.edu](mailto:catherwood-dig@cornell.edu).

If you have a disability and are having trouble accessing information on this website or need materials in an alternate format, contact [web-accessibility@cornell.edu](mailto:web-accessibility@cornell.edu) for assistance.

---

## Equal Employment Opportunity Commission v. Lew Lieberbaum & Co., Inc.,

### Keywords

EEOC, Lew Lieberbaum & Co. Inc., 97-5166 (JGK), Consent Decree, Female, Male, Sex, Retaliation, Sexual Harassment, Race, Employment Law, Title VII, Financial

Case  
Closed

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

#26

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

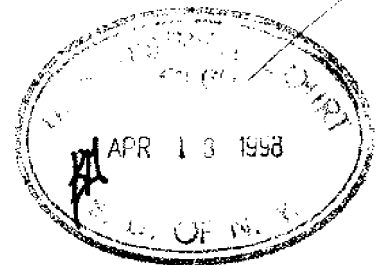
Plaintiff,

-against-

LEW LIEBERBAUM & CO., INC.,

Defendants.

Civil Action  
No. 97-5166 (JGK)



CONSENT DECREE

This cause of action was initiated on July 16, 1997, by the Equal Employment Opportunity Commission (hereinafter "EEOC"), an agency of the United States Government, alleging that Lew Lieberbaum & Co., Inc., now known as First Asset Management, Inc. (hereinafter "LLC"), violated Title VII of the Civil Rights Act of 1964, as amended, and Title I of the Civil Rights Act of 1991 by engaging in unlawful discrimination and harassment against a class of present and former female and male employees because of their sex and/or race, and retaliation (hereinafter "Class").

The parties agree that it is in their mutual interest, the interest of the Class, and of those individuals who have asserted claims to date, identified in Exhibit A-1 attached hereto (hereinafter "Claimants") and who were affected by the alleged unlawful sex and race discrimination, harassment and retaliation, to settle and to fully resolve all issues raised or that could have been raised as part of this

MICROFILM

-900 AM

APR 14 1998

litigation. The terms and conditions set out below are in compromise and settlement of disputed claims of discrimination, harassment and retaliation. This settlement and Consent Decree shall not constitute an adjudication or finding on the merits of the case and shall in no manner be construed as an admission by LLC or any of its present or former directors, officers, employees or agents of any violation of Title VII or any other law, rule or regulation.

The EEOC and LLC do hereby stipulate and consent to the entry of this Decree as final and binding between the parties signatory hereto and, subject to paragraph 13 hereof, their successors and assigns.

This Decree resolves all matters raised in the Complaint filed herein by the EEOC. The parties have agreed that this Decree may be entered without Findings of Fact and Conclusions of Law having been made and entered by the Court.

Consistent with the foregoing and in consideration of the mutual promises of each party to this Decree, the sufficiency of which is hereby acknowledged, it is agreed and IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. This Decree resolves all of the issues, claims and causes of action which are the subject of the Complaint and which arose prior to the effective date of this Decree, including, without limitation, EEOC Charge Nos. 160952407, 160962529, 160970303, 160970389, 160970575, 160970617, and 160970719. Nothing in this Consent Decree is intended to affect, limit, or to be used as an admission by any party in, the pending federal court litigation 97 Civ. 3016 (JGK)

commenced by the three individual charging parties who had brought EEOC Charge Nos. 160-95-2407, 160-97-0303, 160-97-0575 and 160-97-0719.

2. The parties agree that this Court has subject matter and personal jurisdiction, that venue is proper, and that all administrative prerequisites have been met.

3. No party shall contest the jurisdiction of the federal court to enforce this Decree and its terms or the right of any party hereto to bring an enforcement suit upon breach of any of the terms of this Decree by any other party. Nothing in this Decree shall be construed to preclude the EEOC from bringing proceedings to enforce this Decree in the event that LLC fails to perform any of the promises and representations contained herein. The breach of any term of this Decree shall be deemed to be substantive.

4. LLC will continue its sexual harassment training program for all staff and employees by providing an additional one (1) hour program for staff and two (2) additional hours for management personnel, to be conducted by Loeb & Loeb LLP or an outside training entity mutually agreed to by LLC and the EEOC. The training will be completed within six (6) months of the date of entry of this Decree, and a summary of the topics covered and a copy of the attendance sheet will be forwarded to the EEOC within ten (10) days of the completion of the training program.

5. Within ten (10) days of the entry of this Decree, LLC will post the Notice of non-discrimination attached hereto as Exhibit B.

6. LLC will maintain the harassment policy it has promulgated to date, provided that LLC revises said policy as reflected in Exhibit C hereto, within ten (10) days of the entry of the Decree.

7. In consideration for the execution and delivery of the Consent Decree and the Settlement Agreements and Releases executed and delivered by the seventeen Claimants as identified in Exhibit A-1, LLC agrees to pay a total sum of \$1,550,000 in compensatory damages to be allocated among the seventeen (17) Claimants, as set forth in Exhibit A-1. Exhibits A-1, A-2, A-3 and A-4 of this Consent Decree shall be filed under seal. Said payment shall be made in two installments, as follows:

- a. \$750,000 shall be paid by LLC within ten (10) days of the Entry of this Decree by the Court and written notification by the EEOC to LLC's attorney that all seventeen (17) individual Settlement Agreements and Releases ("Releases") have been delivered by Claimants to the EEOC ("Notification Letter").
- b. \$800,000 shall be paid by LLC in accordance with Exhibit A-1 by or before June 30, 1998.

The above payments shall be made by LLC (or by its designated agent from a fund established by LLC) and shall be made directly by check payable to Claimants and/or their attorneys, as specified in Exhibit A-1 hereto. Said checks shall be sent to Claimants or their attorneys in accordance with the payment allocation schedule set forth in Exhibit A-1. The checks sent to Claimants shall be bank or certified checks or from the escrow account of Loeb & Loeb LLP or such other

attorney's escrow account acceptable to the EEOC. Copies of the executed written guarantees of payment of the June 30, 1998 settlement payment are annexed as Exhibit A-2 hereto. The originals of the executed Guarantees shall be delivered to the EEOC within two (2) business days of the receipt by LLC's Attorney of the Notification Letter. LLC shall provide the EEOC with copies of the cancelled checks from payments made to Claimants (or other proof of payment or proof of delivery of payment acceptable to the EEOC) within fifteen (15) business days of their receipt by LLC. Any partial payment of the payment due by or before June 30, 1998 shall be made pro rata to the Claimants, in accordance with the allocation percentages set forth in Exhibit A-1.

The EEOC agrees to hold the original Releases in escrow in a secure location. Within five (5) days of receiving cancelled checks (or other proof of payment or proof of delivery of payment acceptable to the EEOC) indicating that all Claimants were paid and/or delivered payment in full in the amounts referenced in Exhibit A-1, the EEOC will deliver the original Releases to LLC's counsel, Loeb & Loeb LLP.

The EEOC will hold the original Guarantees in escrow in a secure location. Within five (5) days of receiving cancelled checks (or other proof of payment acceptable to the EEOC) indicating that all Claimants were paid in full the amounts referenced in Exhibit A-1, the EEOC will deliver the original Guarantees to LLC's counsel, Loeb & Loeb LLP.

8. LLC and its agents agree not to discriminate or harass any individual because of her or his sex or race.

9. LLC and its agents agree not to retaliate, directly or indirectly: (a) against any individual for asserting her or his rights under Title VII or participating in this Action as a claimant or witness; or (b) against any individual known by LLC to be associated with such individual, because of such association. LLC further agrees that it will instruct its officers and managers that such retaliation is prohibited.

10. Each party and each of the Claimants shall bear their own attorneys' fees and costs incurred in this Action.

11. In the event that, within four months of the entry of this Decree, any persons submit meritorious claims or charges to the EEOC relating to the subject matter of the Complaint, arising out of conduct or events occurring prior to the date of execution of the Consent Decree (hereinafter "Additional Claims"), LLC agrees, pursuant to the procedures set forth in this paragraph, to compensate the person(s) making such Additional Claims (hereinafter "Additional Claimants") in an amount that shall not exceed, in the aggregate, \$200,000, provided that no individual Additional Claimant shall be entitled to receive an award of more than \$40,000. The amount of any such Additional Claim shall be determined by giving due consideration to all legal and factual matters relevant and material to each Claim, which amount shall be negotiated and agreed to between LLC and its attorneys on the one hand, and the EEOC, on the other hand. In the event that no agreement can be reached, LLC and the EEOC (on behalf of the individual Additional Claimant) agree



to submit the dispute to Ms. Susan T. Mackenzie (or, if she is not available, to an impartial arbitrator who shall be mutually agreed to by the parties) who shall determine, based upon all factual and legal considerations, the appropriate and proper amount of pecuniary and/or compensatory damages to be paid, if any, not to exceed \$40,000 per Additional Claimant. Any fees or expenses charged by said arbitrator shall be borne by LLC. Any Additional Claimant receiving any payment hereunder shall, as a condition thereto, be required to execute a release of their claims. LLC's agreement to secure its payment obligations under this paragraph is set forth in the Security Agreement annexed hereto as part of Exhibit A-3.

Within ten (10) days of the entry of this Decree, LLC agrees to provide the EEOC with the last known addresses, phone numbers and social security numbers for all female and/or African-American employees who were employed between July 1, 1993 and the present. The EEOC shall send the letter attached as Exhibit A-4 to all such employees from whom it has not previously received communication.

12. Within fifteen (15) days of the entry of this Decree, LLC will provide the EEOC with a letter for each of the Claimants, in the form annexed hereto as Exhibit D, and LLC shall not be obligated to and will not provide any additional information to prospective employers of Claimants.

13. LLC has stated that it is not currently contemplating any merger or consolidation with any other entity or other change of corporate control. However, LLC and the EEOC agree that if, during the three-year term of this

Decree, LLC requests, in writing, a modification of the successorship and assigns provision with respect to the non-monetary obligations of the Decree, the EEOC agrees that it will, in good faith, consider such modifications. The EEOC and LLC agree that the monetary obligations set forth in this Decree (paragraphs 7 and 11) shall, for all purposes, remain binding on LLC's successors and assigns.

14. Should any reviewing court refuse to approve this Consent Decree, or desire to modify it in any way, the Consent Decree shall be null and void unless the parties expressly approve in writing any such modification by the reviewing court.

15. This Decree with Exhibits constitutes the complete understanding among the parties. No other promises or agreements shall be binding unless agreed to in writing and signed by these parties.

16. This Decree will remain in effect for three (3) years from the date of entry.

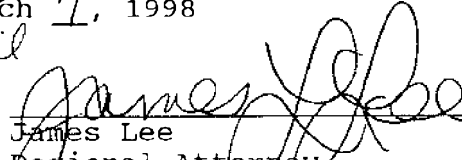
17. This Court shall retain jurisdiction to adjudicate any disputes which may arise in connection with the enforcement of this Decree, the Guarantees provided hereunder and/or the Settlement Agreements and Releases provided for herein.

18. This Consent Decree and attached Exhibits have been drafted jointly by the parties. Therefore, in any construction of said documents, nothing contained therein shall be construed as against any particular party.

Dated: New York, New York

~~March 7, 1998~~

*April*

  
James Lee

Regional Attorney

FOR PLAINTIFF EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

New York District Office

7 World Trade Center, 18th Floor

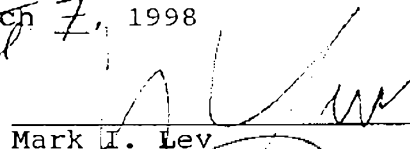
New York, New York 10048

(212) 748-8512

Dated: New York, New York

~~March 7, 1998~~

*April*

  
Mark I. Lev

Chairman and Chief Executive  
Officer

FOR DEFENDANT

LEW LIEBERBAUM & CO., INC. (now known  
as First Asset Management, Inc.)

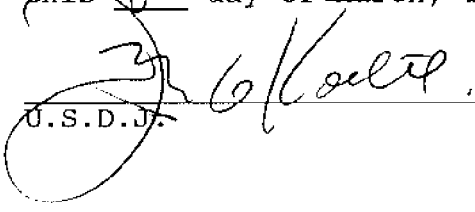
600 Old Country Road

Garden City, New York 11530

Approved and So Ordered

this 8 day of ~~March, 1998~~

*April, 1988*

  
U.S.D.J.

THIS DOCUMENT WAS ENTERED  
ON THE BOOK OF 4/14/98





**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**New York District Office**

7 World Trade Center, 18th Floor

New York, NY 10048-1102

Phone: (212) 748-8500

TDD: (212) 748-8399

General FAX: (212) 748-6464

Legal FAX: (212) 748-8465

**EXHIBIT B**

**NOTICE TO ALL EMPLOYEES OF FIRST ASSET MANAGEMENT, INC.**

This notice is being posted pursuant to a Consent Decree entered into between Lew Lieberbaum & Co. Inc. (now known as First Asset Management, Inc.) and the United States Equal Employment Opportunity Commission ("EEOC"), in resolution of Case No. 97-Civ.-5166 (JGK).

Federal law and the Consent Decree prohibit sexual and racial harassment and discrimination against any individual because of his or her sex.

Federal law also prohibits retaliation against any individual by an employer because the individual complains of discrimination, cooperates with the government's investigation of a charge of discrimination, participates as a witness or potential witness in litigation, or otherwise exercises his or her rights under the law.

Should you have any complaints of discrimination, you may contact the

Equal Employment Opportunity Commission  
New York District Office  
7 World Trade Center, 18th Floor  
New York, NY 10048  
(212) 748-8500  
(800) 669-4000

**THIS IS AN OFFICIAL NOTICE AND SHALL NOT BE DEFACED BY ANYONE**

This notice must remain posted for three (3) years from the date of posting and may not be altered, defaced or covered by any other material.



## II. EQUAL OPPORTUNITY

### **A. STATEMENT OF PURPOSE**

We believe all employees are entitled to an Equal Employment Opportunity. We do not discriminate against employees or applicants for employment because of race, color, religion, sex, age, marital status, national origin, disability or veterans status, provided they are qualified and meet the mental and physical requirements established by First Asset Management for the job. We try to employ the best people for each position. All personnel decisions are based on merit. You should report any claim of discrimination to Janine Scafo, in the Human Resources Department, and/or the Director of Compliance, the General Counsel or the Assistant to the Chief Operating Officer.

### **B. EQUAL EMPLOYMENT OPPORTUNITY (EEO) POLICY**

IT IS THE POLICY OF FIRST ASSET MANAGEMENT TO PROVIDE EQUAL OPPORTUNITY TO ALL QUALIFIED EMPLOYEES AND APPLICANTS WITHOUT REGARD TO RACE, RELIGION, CREED, COLOR, SEX, AGE, DISABILITY, OR NATIONAL ORIGIN. AFFIRMATIVE ACTION WILL BE TAKEN TO ENSURE THE IMPLEMENTATION AND ENFORCEMENT OF THIS POLICY.

IT IS OUR OBJECTIVE TO COMPLY WITH THE REQUIREMENTS AND OBJECTIVES OF EQUAL OPPORTUNITY EMPLOYMENT AS SET FORTH IN APPLICABLE PRESIDENTIAL EXECUTIVE ORDERS AND OTHER FEDERAL, STATE AND MUNICIPAL LAWS AND REGULATIONS.

WE SEEK TO HIRE INDIVIDUALS WHO ARE QUALIFIED FOR POSITIONS OF EMPLOYMENT BY VIRTUE OF JOB-RELATED STANDARDS OF EDUCATION, TRAINING AND EXPERIENCE, AND WE STRIVE TO AVOID ALL UNLAWFUL EMPLOYMENT AND PROMOTION PRACTICES.

### **C. HARASSMENT**

It is our policy that all employees are responsible for assuring our work-place is free from any and all forms of harassment, whether it be based on race, color, religion, gender, national origin, age, disability or status as a Vietnam-era or special disabled veteran. Improper interference with the ability of our employees to perform their expected job duties will not be tolerated.

Because of our disapproval of offensive or inappropriate sexual behavior at work, all employees must avoid any action or conduct which could be viewed as sexual harassment including, but not limited to:

1. Unwelcome sexual advances; requests for sexual favors; and all other verbal or physical conduct of a sexual or other offensive nature, especially where:
  - Submission to such conduct is made either explicitly or implicitly a term or condition of employment;
  - Submission to or rejection of such conduct is used as the basis for decisions affecting an individual's employment; or
  - Such conduct has the purpose or effect of creating an intimidating, hostile or offensive working environment.
2. Offensive comments and other sexually oriented statements.

## **Complaint Procedure**

If you experience any job-related harassment based on your sex, your race, or another factor, or believe you have been treated in an unlawful, discriminatory manner, if possible, you should immediately instruct the harasser to cease the misconduct. If the offensive conduct continues, promptly report the incident to Janine Scafo in the Human Resources Department who is also our Equal Opportunity Compliance Officer, and/or the Director of Compliance, the General Counsel or the Assistant to the Chief Operating Officer.

All problems will be handled promptly. In addition, special privacy safeguards will be applied in handling sexual harassment complaints, under which the privacy of the charging party and the person accused of sexual harassment will be held in confidence to the extent possible. We will retain as confidential all documentation of allegations and investigations.

We will take appropriate corrective action against the offending employee, including disciplinary measures up to and including discharge when justified, to remedy any violation of this policy.

We consider the filing of a complaint to be a serious matter and expect all employees involved in the investigation, including the complainant, the subject of the complainant and witnesses, to be forthcoming and truthful in their responses.

First Asset Management prohibits any form of retaliation against any employee for filing a bona fide complaint under this policy, or for assisting in a complaint investigation.

### **D. NONDISCRIMINATION AGAINST INDIVIDUALS WITH DISABILITIES**

First Asset Management complies with the Americans with Disabilities Act (ADA) and applicable state and local laws prohibiting discrimination in employment against qualified individuals with disabilities. First Asset Management also provides reasonable accommodation for such individuals in accordance with these laws.

#### **Procedure for Requesting an Accommodation**

A qualified individual with a disability may request, in writing, a reasonable accommodation to our Human Resources Department. On receipt of an accommodation request, a member of the Human Resources Department will meet with the individual to discuss and identify the precise limitations resulting from the disability and the potential accommodation that First Asset Management might make to help overcome those limitations.

The Human Resources Department, in conjunction with the appropriate management representatives identified as having a need to know (e.g., the individual's supervisor/department head), will determine the feasibility of the requested accommodation, considering various factors, including, but not limited to, the nature and cost of the accommodation, the landlord's consideration, the availability of tax credits and deductions, outside funding, the facility's overall financial resources and organization, and the impact of the accommodation on the operation of the facility, including its impact on the ability of other employees to perform their duties. The requested accommodation may be denied if it creates an undue hardship for us.





To Whom It May Concern:

As a matter of policy, Lew Lieberbaum & Co., Inc. (now known as First Asset Management, Inc.) does not provide references for departing employees. However, we are pleased to confirm that \_\_\_\_\_ was employed at Lew Lieberbaum & Co., Inc. as a \_\_\_\_\_ from \_\_\_\_\_ until the cessation of her employment on \_\_\_\_\_.

\_\_\_\_\_  
Janine Scafo  
Director of Human Resources